IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.796 OF 2005

Shri Kalyan Kisan Bhondve
alias Bhosale ....Petitioner.

Versus

The State of Maharashtra
and Ors. ...Respondents.

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Mr.Abhaykumar Apte, Advocate for the Petitioner.
Mrs.A.S.Pai, A.P.P. for the State.

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CORAM : D.G.DESHPANDE AND
SMT.V.K.TAHILRAMANI,JJ.
DATE OF RESERVING: MAY 02, 2006.
THE ORDER
DATE OF PRONOUNCING: JUNE 28, 2006.
THE ORDER

ORAL ORDER (PER SMT.TAHILRAMANI,J.)

. Heard Mr.Apte learned Advocate for the petitioner and Mrs.Pai learned APP for the State.

2. The petitioner herein had applied for furlough. The application for furlough of the petitioner came to be rejected on the ground that on earlier occasion when he was released on furlough, he did not return back in time and he had to be traced by the police and brought back to prison.

3. The learned Advocate for the petitioner had submitted that on account of overstay of 344 days,

the petitioner had been punished by cutting his remission and hence the said overstay cannot once again be made a ground to refuse furlough leave to the petitioner or to hold him permanently ineligible for furlough leave. Reliance was placed on two decisions of the Single Judge of this Court in the case of **Santosh Bhagwandin Bachharaj Vs. Superintendent, Central Prison, Amravati**, reported in **2003(4) Mh.L.J. 349** and **Sarfuddin Aminuddin Vs. State of Maharashtra and Ors.**, reported in **2003(4) Mh.L.J. 481**.

4. This Writ Petition came up before the Single Judge of this Court (Coram:A.M.Khanwilkar,J.), wherein the above contentions were raised and reliance was placed on the above cited two decisions. As the Single Judge (A.M.Khanwilkar,J) did not agree with the view taken by the learned Single Judge in the above cited two decisions, the matter came to be referred to the Division Bench.

5. The questions in issue are whether a prisoner who has not reported back in time is entitled to be released on furlough as of right

despite the fact that on earlier occasion when he was released on parole or furlough, he did not report back in time and had to be arrested by the police and brought back to prison; and whether once a prisoner has been awarded prison punishment for overstay by cutting remission whether his furlough application can be rejected, because he has already been punished once by cutting of his remission. The very same issues were before this Division Bench and it has been decided in Criminal Writ Petition Nos.1624 of 2004 (Bharat @ Velji Govindji Panchal @ Lohar Vs. State of Maharashtra & Ors.), and two other Writ Petitions decided alongwith it i.e. Cri.W.P.No.3019 of 2005 and Cri.W.P.No.375 of 2006.

6. As the point is covered by the decision in Cri.Writ Petition Nos.1624 of 2004, 3019 of 2005 and 375 of 2006, this case too, would be covered by the said decision. In the said decision in respect of the first issue we have held that in case of a prisoner who has overstayed, he cannot claim to be released on furlough as of right. On the second issue, we have held that refusal to grant furlough to prisoner whose remission has

been cut on account of overstay does not amount to punishment.

7. In the present case, the petitioner has overstayed by 344 days and ultimately he had to be traced and arrested by the police and brought back to prison. We find that no reason has been given by the petitioner for his absconding for about a year. Thus, it is seen that the petitioner overstayed without any good cause or reasonable excuse. In this view of the matter, in view of the decision in Cri.Writ Petition Nos. 1624 of 2004, 3019 of 2005 and 375 of 2006, we are of the opinion that the authorities were right in rejecting the application of the petitioner for furlough.

8. It is however made clear that in future if the petitioner makes an application for furlough, the authorities shall decide the same keeping various factors as stated in the decision relating to Cri.Writ Petition Nos. 1624 of 2004, 3019 of 2005 and 375 of 2006 in view.

9. Writ Petition is disposed of.

(D.G.DESHPANDE, J.)

(SMT.V.K.TAHILRAMANI,J.)